

1 Thomas H. Allen, State Bar #11160
Philip J. Giles, State Bar #30340
2 David B. Nelson, State Bar #34100
ALLEN BARNES & JONES, PLC
3 1850 N. Central Ave., Suite 1150
Phoenix, Arizona 85004
4 Ofc: (602) 256-6000
Fax: (602) 252-4712
5 Email: tallen@allenbarneslaw.com
cvandewerker@allenbarneslaw.com

6 Attorneys for Debtors

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF ARIZONA**

10 In re:

Chapter 11

11 PHILLIP J. HOOLEHAN and NICOLE M.
HOOLEHAN,

Case No.: 2:18-bk-13152-EPB

12 Debtors.

**DEBTORS' PLAN OF REORGANIZATION
DATED MARCH 5, 2019**

13 **INTRODUCTION**

14 Phillip J. Hoolehan and Nicole M. Hoolehan (the "Debtors"), and debtors-in-possession
15 in the above-captioned Chapter 11 case, hereby files this *Plan of Reorganization Dated January*
16 *5, 2019*. In addition to reviewing this Plan, all creditors and parties in interest are encouraged to
17 consult the Disclosure Statement before voting to accept or reject this Plan. **NO**
18 **SOLICITATION MATERIALS OTHER THAN THE DISCLOSURE STATEMENT**
19 **AND RELATED MATERIALS TRANSMITTED THEREWITH HAVE BEEN**
20 **APPROVED OR AUTHORIZED BY THE BANKRUPTCY COURT IN SOLICITING**
21 **ACCEPTANCES OR REJECTIONS OF THIS PLAN.**
22
23
24
25
26
27
28

{00149342}

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS

1.1 AB&J

This term means Allen Barnes & Jones PLC.

1.2 Administrative Claim

1.3 Allowed Claim

1.4 ADOR

1.5 Ballot

1.6 Bankruptcy Code or Code

1.7 Bankruptcy Court or Court

1.8 Bankruptcy Rules or Rules

1.9 Business Day

1.10 Capital One

1.11 Chapter 11 Case or Case

1.12 Chapter 11 Professionals

1.13 Claim

1.14 Claimant

1.15 Class

1.16 Confirmation Date

1.17 Confirmation Hearing

1.18 Confirmation Order

1.19 Creditor

1.20 Debtors

1.21 Disclosure Statement

1.22 Disputed Claim

1.23 Effective Date

1.24 Estate

1	1.25	Executory Contract	9
2	1.26	Final Bar Date	9
3	1.27	Final Decree	9
4	1.28	Final Order	9
5	1.29	General Unsecured Claim	9
6	1.30	IDOR	9
7	1.31	Impaired	10
8	1.32	Initial Bar Date	10
9	1.33	Initial Payment Date	10
10	1.34	IRS	10
11	1.35	Litigation	10
12	1.36	New Value	10
13	1.37	Person	10
14	1.38	Petition Date	10
15	1.39	Plan	10
16	1.40	Priority Tax Claim	10
17	1.41	Professional Fees	10
18	1.42	Property	10
19	1.43	Santander	11
20	1.44	Secured Claim	11
21	1.45	Secured Creditor	11
22	1.46	Unsecured Claim	11
23	1.47	Unsecured Creditor	11
24	ARTICLE 2 – IMPORTANT DATES & DEADLINES		11
25	2.1	Initial Bar Date	11
26	2.2	Final Bar Date	12
27	2.3	Claims Objection Deadline.	12
28	2.4	Deadline for Assumption or Rejection of Executory Contracts	12

1	ARTICLE 3 - CLASSIFICATION AND TREATMENT OF CLAIMS	13
2	3.1 Unclassified Claims	13
3	3.1.1 Allowed Administrative Claims	13
4	3.1.2 Allowed Priority Tax Claim of the IRS	13
5	3.2 Class I(a) – Secured Claim of Santander	15
6	3.3 Class I(b) – Secured Claim of Capital One	15
7	3.4 Class I(c) – Secured Claim of IRS	15
8	3.5 Class II – General Unsecured Creditors	16
9	ARTICLE 4 - PLAN IMPLEMENTATION	16
10	ARTICLE 5 - VOTING PROCEDURE	17
11	ARTICLE 6 - BINDING EFFECT OF PLAN	17
12	ARTICLE 7 - EFFECT OF CONFIRMATION	17
13	ARTICLE 8 - MODIFICATION OF PLAN	18
14	8.1 Pre-Confirmation	18
15	8.2 Post-Confirmation	18
16	8.3 Effect of Modification	18
17	ARTICLE 9 - RETENTION OF JURISDICTION	19
18	ARTICLE 10 - RETENTION AND PROSECUTION OF CLAIMS	19
19	10.1 Preservation of Debtors’ Claims, Demands, and Causes of Action	19
20	10.2 Procedure for Determination of Claims	20
21	10.2.1 Disputed Claims	20
22	10.2.2 Treatment of Contingent Claims	20
23	ARTICLE 11 - PROVISIONS GOVERNING DISTRIBUTIONS	20
24	11.1 Distributions by the Debtors	20
25	11.2 Date of Distributions	20
26	11.3 Delivery of Distributions	21
27	11.4 Means of Payment	21
28	11.5 De Minimis Cash Distributions	21

1	11.6 Setoff	21
2	ARTICLE 12 - GENERAL PROVISIONS	22
3	12.1 Extension of Dates	22
4	12.2 Notices	22
5	12.3 Default	22
6	12.4 Closure of the Case	22
7	12.5 Effect of Appeal	22
8	12.6 Exculpation and Limitation of Liability	23
9	12.7 General Injunction	23
10	12.8 Interest	23
11	12.9 Additional Assurances	24
12	12.10 Confirmation by Non-Acceptance Method	24
13	12.11 Vesting	24
14	12.12 Successors and Assigns	24
15	12.13 Withdrawal of Plan	24
16	12.14 Severability and Reformation	24
17	12.15 Prohibition Against Prepayment Penalties	25
18	12.16 Payment of Statutory Fees and Filing of Quarterly Reports	25
19	12.17 Governing Law	25
20	12.18 Special Tax Issues	25
21	12.19 Conflicts Between Plan and Confirmation Order	25
22		
23		
24		
25		
26		
27		
28		

1 **ARTICLE 1 – DEFINITIONS**

2 **Rules of Construction** The following terms shall have the meanings specified below
3 when used in this Plan. Wherever from the context it appears appropriate, each term stated in
4 either the singular or the plural shall include the singular and the plural, and pronouns stated in
5 the masculine, feminine, or neutral gender shall include the masculine, the feminine, and the
6 neutral. The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer
7 to the Plan as a whole and not to any particular section, subsection, or clause contained in the
8 Plan. Unless otherwise specified, all section, schedule, or exhibit references in the Plan are to
9 the respective section in, schedule to, or exhibit to the Plan. The headings in the Plan are for
10 convenience only and shall not limit or otherwise affect the provisions of the Plan. The rules of
11 construction contained in Code § 102 shall apply to the construction of the Plan, and unless
12 specifically modified herein, terms that are defined by the Bankruptcy Code shall have the same
13 meanings defined by the Code, or, if not defined therein, their ordinary meanings. These
14 definitions are a substantial and operative part of the Plan.

15 **1.1 AB&J**

16 This term means Allen Barnes & Jones PLC.

17 **1.2 Administrative Claim**

18 This term means every cost or expense of administration of this Case allowed under
19 Code § 503(b) and referred to in Code § 507(a)(1), including, without limitation: a) any actual
20 and necessary expense of preserving the Estate as approved by the Bankruptcy Court; b) all
21 Professional Fees; and c) all fees and charges assessed against the Debtors’ Estate under 28
22 U.S.C. § 1930.

23 **1.3 Allowed Claim**

24 This term means every Claim: (a) (i) as to which a proof of such Claim has been timely
25 filed pursuant to Sections 2.1 or 2.2 below, or (ii) which the Debtors have scheduled in their
26 Schedules (including any amendments thereto) as liquidated in amount, not contingent, and
27 undisputed; and in either event: (b) (i) as to which no objection to the allowance of such Claim
28 has been filed within any applicable time period fixed by the Bankruptcy Court, or (ii) as to

1 which the order allowing such Claim has become a Final Order. The term “Allowed Claim”
2 may be used throughout the Plan with each of the various Creditors’ Claims or Classes of those
3 Claims (*e.g.*, “Allowed Administrative Claims” or “Allowed Secured Claims”) to signify that
4 such Claims are, will be, or must be Allowed Claims to qualify for certain treatment under the
5 Plan.

6 **1.4 ADOR**

7 This term means the Arizona Department of Revenue.

8 **1.5 Ballot**

9 This term means the Ballot for accepting or rejecting the Plan, which will be distributed
10 to holders of Claims in Classes that are Impaired and entitled to vote on this Plan.

11 **1.6 Bankruptcy Code or Code**

12 These terms mean Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as now
13 existing or hereafter amended during this Case.

14 **1.7 Bankruptcy Court or Court**

15 These terms mean the United States Bankruptcy Court for the District of Arizona,
16 Phoenix Division, or any other court that exercises jurisdiction over all or part of the Case,
17 including the United States District for the District of Arizona to the extent that the reference of
18 all or part of the Case is withdrawn.

19 **1.8 Bankruptcy Rules or Rules**

20 This term means the Federal Rules of Bankruptcy Procedure promulgated under 28
21 U.S.C. § 2075 and the local rules of Court, as applicable during the term of the Case.

22 **1.9 Business Day**

23 This term means every day except Saturdays, Sundays, and holidays observed by the
24 Bankruptcy Court.

25 **1.10 Capital One**

26 This term means Capital One Auto Finance

27 **1.11 Chapter 11 Case or Case**

28 This term means Case No. 2:18-bk-13152-EPB.

1 **1.12 Chapter 11 Professionals**

2 This term means all professionals employed by the Estate under Code § 327.

3 **1.13 Claim**

4 This term means “claim” as defined in Code § 101(5).

5 **1.14 Claimant**

6 This term means the holder of a Claim.

7 **1.15 Class**

8 This term means each of the categories of classified claims described in Article 3 of the
9 Plan.

10 **1.16 Confirmation Date**

11 This term means the date on which the Bankruptcy Court enters the Confirmation Order.

12 **1.17 Confirmation Hearing**

13 This term means the hearing regarding confirmation of the Plan conducted by the
14 Bankruptcy Court pursuant to Code § 1128, including any adjournment or continuation of that
15 hearing from time to time.

16 **1.18 Confirmation Order**

17 This term means the order of the Bankruptcy Court confirming the Plan pursuant to
18 Code § 1129.

19 **1.19 Creditor**

20 This term means “creditor” as defined in Code § 101(10).

21 **1.20 Debtors**

22 This term means Phillip J. Hoolehan and Nicole M. Hoolehan.

23 **1.21 Disclosure Statement**

24 This term means the *Debtors' Disclosure Statement Dated March 5, 2019*, presented by
25 the Debtors with respect to the Plan, in its present form or as it may be altered, amended, or
26 modified.

27 **1.22 Disputed Claim**

28 This term means every Claim: a) that is scheduled by the Debtors as disputed,

1 contingent, or unliquidated; or b) that is not an Allowed Claim. Where performance is to be
2 rendered under the Plan to any Creditor in respect to a Disputed Claim, such performance shall
3 not be due (notwithstanding the occurrence of the Effective Date for all other purposes and legal
4 effects) unless and until such Disputed Claim becomes, wholly or in part, an Allowed Claim.

5 **1.23 Effective Date**

6 This term means the thirtieth day that occurs after the Confirmation Date.

7 **1.24 Estate**

8 This term means the Debtors' bankruptcy estate created under Code § 541.

9 **1.25 Executory Contract**

10 This term means every unexpired lease and other contract that is subject to being
11 assumed or rejected under Code § 365.

12 **1.26 Final Bar Date**

13 This term means the thirtieth day that occurs after the Effective Date.

14 **1.27 Final Decree**

15 This term means a Final Order showing that the Plan has been fully administered.

16 **1.28 Final Order**

17 This term means an order or judgment of the Court that a) shall not have been reversed,
18 stayed, modified or amended and the time to appeal from, or to seek review or rehearing of,
19 shall have expired and as to which no appeal or petition for review, or hearing for *certiorari* is
20 pending, or b) if appealed from, shall have been affirmed and no further hearing, appeal, or
21 petition for *certiorari* can be taken or granted.

22 **1.29 General Unsecured Claim**

23 This term means every Unsecured Claim against the Debtors (including, but not limited
24 to, every such Claim arising from the rejection of an Executory Contract, deficiencies related to
25 Secured Claims of Creditors, and Unsecured Claims of Creditors with Claims solely against the
26 Debtors) that will be classified and paid under the Plan as the Plan provides for Class II Claims.

27 **1.30 IDOR**

28 This term means the Illinois Department of Revenue.

1 **1.31 Impaired**

2 This term means “impaired” as defined in Code § 1124.

3 **1.32 Initial Bar Date**

4 This term means the day prior to the date of the first hearing on the Disclosure Statement.

5 **1.33 Initial Payment Date**

6 This term means the first day of the month that occurs 11 months after the Effective Date.

7 **1.34 IRS**

8 This term means the Internal Revenue Service.

9 **1.35 Litigation**

10 This term means any potential causes of action belonging to the estate, including but not
11 limited to those arising from the events described in Article 2 of the Disclosure Statement.

12 **1.36 New Value**

13 This term means the contribution of \$7,500 by a third-party to the Debtors to be applied
14 towards implementation of this Plan.

15 **1.37 Person**

16 This term means “person” as defined in Code § 101(41).

17 **1.38 Petition Date**

18 This term means October 26, 2018, the filing date of the Debtors’ voluntary Chapter 11
19 petition.

20 **1.39 Plan**

21 This term means this *Debtors’ Plan of Reorganization Dated January 8, 2019* and every
22 amendment to or modification thereof, if any.

23 **1.40 Priority Tax Claim**

24 Any Claim of a governmental unit entitled to priority under Code § 507(a)(8).

25 **1.41 Professional Fees**

26 This term means any of the interim and final professional fees, costs, and expenses
27 charged by the Chapter 11 Professionals.

28 **1.42 Property**

1 This term means, with respect to the Debtors, all rights, causes of action, all of the right,
2 title and interest in and to Property (real or personal, tangible or intangible, legal or equitable,
3 liquidated or unliquidated) of whatever type or nature, owned by the Debtors as of the Effective
4 Date, together with Property subsequently acquired by the Debtors, and including, but not
5 limited to, Property as defined in Code § 541.

6 **1.43 Santander**

7 This term means Santander Consumer USA Inc.

8 **1.44 Secured Claim**

9 This term means every Claim or portion thereof that is asserted by a Creditor holding
10 such Claim to be secured by a lien, security interest, or assignment encumbering Property in
11 which the Debtors have an interest; provided, however, that such Claim shall be a Secured
12 Claim only to the extent of the validity, perfection, and enforceability of the claimed lien,
13 security interest, or assignment and only to the extent of the value of the interest of the Creditor
14 holding such Claim against such Property.

15 **1.45 Secured Creditor**

16 This term means every Creditor that asserts a Secured Claim in the Bankruptcy Case.

17 **1.46 Unsecured Claim**

18 This term means all Claims asserted by Creditors of the Debtors, including deficiency
19 Claims, dissolution Claims and Claims arising out of the rejection of Executory Contracts, other
20 than Secured Claims, Administrative Claims, and Priority Tax Claims.

21 **1.47 Unsecured Creditor**

22 This term means the owner or holder of an Unsecured Claim.

23 **ARTICLE 2 – IMPORTANT DATES & DEADLINES**

24 **2.1 Initial Bar Date**

25 The Court originally set a hearing for _____ at 230 N. First Avenue,
26 ____ Floor, Courtroom _____, Phoenix, Arizona, to consider the adequacy of the Debtors’
27 initial disclosure statement and set the same day as the Initial Bar Date for filing proofs of
28 Claim. For eligibility as Allowed Claims, proofs of Claim must be filed for:

- 1 a) Claims not listed in the Schedules of Assets and Liabilities, as may be amended
2 from time to time;
- 3 b) Claims that are listed in the Schedules of Assets and Liabilities as disputed,
4 contingent, or unliquidated;
- 5 c) Claims that differ in any respect from those listed in the Schedules of Assets and
6 Liabilities (including, without limitation, the assertion of any right to a setoff under
7 Code § 553 or otherwise);
- 8 d) Administrative Claims arising prior to the Initial Bar Date, except for Professional
9 Fees; and
- 10 e) Claims arising from the Debtors' rejection of an Executory Contract that occurs
11 prior to the Bar Date.

12 Any Person or entity asserting one of the foregoing types of Claims that failed to timely
13 file a proof of Claim or application for payment thereof prior to Initial Bar Date is deemed to
14 have waived its Claim, and the Claim will be disallowed and forever barred.

15 **2.2 Final Bar Date**

16 Applications for allowance and payment of a) Administrative Claims that arise after the
17 Initial Bar Date b) Professional Fees incurred prior to the Confirmation Date, or c) Claims
18 resulting from the Debtors' rejection of Executory Contracts after the Initial Bar Date must be
19 filed no later than the Final Bar Date. Any Person asserting one of the foregoing types of
20 Claims that fails to timely file a proof of Claim or application for allowance and payment
21 thereof shall be deemed to have waived its Claim, and the Claim will be disallowed. Any
22 Professional Fees incurred after the Confirmation Date shall be payable in the normal course of
23 the Debtors' affairs without the need to seek or obtain Bankruptcy Court approval.

24 **2.3 Claims Objection Deadline.**

25 On or before the sixtieth day after the Effective Date, the Debtors or any party in interest
26 may file with the Bankruptcy Court, serving a copy upon Debtors' counsel, if necessary, an
27 objection to any application for approval of an Administrative Claim or proof of Claim filed, or
28 deemed filed herein.

29 **2.4 Deadline for Assumption or Rejection of Executory Contracts**

30 Prior to the Confirmation Date, the Debtors will file motions to assume or reject all
31 Executory Contracts. Any Executory Contract not assumed prior to the Confirmation Date will

1 be deemed rejected.

2 **ARTICLE 3 - CLASSIFICATION AND TREATMENT OF CLAIMS**

3 This Plan defines various Classes of Claims and provides for their treatment. This Plan
4 deals with all Claims against the Debtors of whatever character. Only Allowed Claims are
5 entitled to receive payments under the Plan. In accordance with Code §§ 1122 and 1123, all
6 Claims against the Debtors or the Estate are classified and will receive treatment as follows:

7 **3.1 Unclassified Claims**

8 Pursuant to Code § 1123(a)(1), Administrative Claims and Priority Tax Claims are not
9 classified for purposes of voting on, or receiving distributions under, the Plan. Holders of
10 Administrative Claims and Priority Tax Claims are not entitled to vote on the Plan, but rather,
11 are treated separately as set forth in Sections 3.1 of the Plan and summarized herein.

12 **3.1.1 Allowed Administrative Claims**

13 This Class includes, without limitation, post-petition tax Claims, Professional
14 Fees, and any fees due and payable to the United States Trustee. Applications for approval of
15 Administrative Claims must be filed with the Court, and copies must be served upon Debtors'
16 counsel, unless exempted from such requirement. Any holder of an Administrative Claim that
17 fails to timely file a final application for approval of such Administrative Claim shall be deemed
18 to have waived its Claim, and the Claim will be disallowed. The holders of Allowed
19 Administrative Claims shall be paid in full on the Effective Date unless otherwise agreed.

20 **3.1.2 Allowed Priority Tax Claim of the IRS**

21 The Allowed Priority Tax Claim of the IRS relating to the Debtors' federal tax
22 liability is in the total amount of \$175,005.12. Interest shall accrue on the Priority Tax Claim of
23 the IRS from the Petition Date at the statutory rate set forth in I.R.C. §§ 6621 and 6622 that is in
24 effect as of the Confirmation Date, currently 6.0% compounded daily.

25 The Debtors shall pay the Allowed Priority Tax Claim of the IRS, including
26 interest accrued from the Petition Date, in full through equal monthly payments beginning on
27 the Effective Date and extending no longer than sixty (60) months of the Petition Date. As of
28 the drafting of the Disclosure Statement, the Debtors estimate the Debtors will pay the Allowed

1 Priority Tax Claim of the IRS in full through fifty-four (54) equal monthly payments of
2 \$3,706.06.

3 In the event the Debtors default on any payment due to the IRS as required under
4 the confirmed Plan, and in the event the Debtors fail to cure said default within thirty (30) days
5 after written notice of the default is mailed to the Debtors and their attorneys, the entire imposed
6 liability together with any unpaid current liabilities, shall become due and payable immediately.
7 The IRS may collect unpaid liabilities that become due as a result of the default through the
8 administrative collection provision or judicial remedies as set forth in the Internal Revenue
9 Code. The IRS shall not be required to seek a modification from the automatic stay to collect
10 any tax liabilities from Property that re-vests with the Debtors. No prepayment penalty shall
11 pertain to this Claim.

12 The IRS also holds a Class I(c) Secured Claim of \$31,519.97 and a Class II
13 Unsecured Claim of \$88,090.26.

14 **3.1.3 Allowed Priority Tax Claim of the ADOR**

15 The Allowed Priority Tax Claim of the ADOR relating to income taxes is in the
16 total amount of \$7,700.57 as of the Petition Date. The Claim shall accrue interest from the
17 Petition Date at the statutory rate set forth in A.R.S. § 42-1123(A), currently 6% compounded
18 annually, that is in effect during the month the Plan is confirmed. The Debtors will pay the
19 Claim, including interest accrued from the Petition Date, through equal monthly payments
20 beginning on the Effective Date and extending no longer than (60) months of the Petition Date.
21 As of the drafting of the Disclosure Statement, the Debtors estimate the Debtors will pay the
22 Allowed Priority Tax Claim of the ADOR in full through in fifty-four (54) equal monthly
23 payments of \$163.07 beginning on the Effective Date. No prepayment penalty shall pertain to
24 this Claim.

25 The ADOR also holds a General Unsecured Claim of \$542.03 which shall be
26 treated as a Class II Claim.

27 **3.1.4 Allowed Priority Tax Claim of IDOR**

28 The Allowed Priority Tax Claim of the IDOR relating to individual income taxes

1 is in the total amount of \$936.78. The Claim shall accrue interest from the Petition Date at the
2 statutory rate set forth in 35 ILCS § 735/3-2(a), (c) simple interest calculated on a daily basis,
3 currently 6%. The Debtors will pay the Claim, including interest accrued from the Petition
4 Date, through equal monthly payments beginning on the Effective Date and extending no longer
5 than (60) months of the Petition Date. As of the drafting of the Disclosure Statement, the
6 Debtors estimate the Debtors will pay the Allowed Priority Tax Claim of the IDIOR in full
7 through fifty-four (54) equal monthly payments of \$19.84 beginning on the Effective Date. No
8 prepayment penalty shall pertain to this Claim.

9 The IDOR also holds a General Unsecured Claim of \$1,752.61 which shall be
10 treated as a Class II Claim.

11 **3.2 Class I(a) – Secured Claim of Santander**

12 Class I(a) consists solely of the Allowed Secured Claim of Santander attributable to a
13 first-position lien on the Debtors' 2018 Dodge Durango evidenced by lien notation on the
14 vehicle's certificate of title. Pursuant to Code § 506(a)(1), the Class I(a) Claim is in the total
15 amount of the value of the 2018 Dodge Durango, estimated at \$52,818.00 which shall accrue
16 interest at 4%. Class I(a) shall be paid the full amount of in sixty (60) equal monthly payments
17 of \$972.72. Santander shall retain its lien to the extent of its Class I(a) Claim. No prepayment
18 penalty shall pertain to this Claim. Class I(a) is Impaired.

19 **3.3 Class I(b) – Secured Claim of Capital One**

20 Class I(b) consists solely of the Allowed Secured Claim of Capital One attributable to a
21 first-position lien on the Debtors' 2017 Ford Focus evidenced by lien notation on the vehicle's
22 certificate of title. Pursuant to Code § 506(a)(1) , the Class I(b) Claim is in the total amount of
23 the value of the 2017 Ford Focus, estimated at \$28,310.00, which shall accrue interest at 4%.
24 Class I(b) shall be paid in sixty (60) equal monthly payments of \$521.37. Capital One shall
25 retain its lien to the extent of its Class I(b) Claim. No prepayment penalty shall pertain to this
26 Claim. Class I(b) is Impaired.

27 **3.4 Class I(c) – Secured Claim of IRS**

28 Class I(c) consists of the Allowed Secured Claim of the IRS in the amount of

1 \$31,519.97. Holders of the Class I(c) Claim shall receive payment within sixty (60) months of
2 the Effective Date. The Class I(c) Claim shall accrue interest from the Effective Date at the
3 statutory rate set forth in I.R.C. §§ 6621 and 6622, currently 6% compounded daily, that is in
4 effect during the month the Plan is confirmed. No prepayment penalty shall pertain to this
5 Claim. As of the drafting of the Disclosure Statement, the Debtors estimate the Debtors will pay
6 the Allowed Secured IRS claim in full through fifty-four (54) equal monthly payments at
7 \$667.49. Any alleged remaining unpaid Claim to the IRS not otherwise receiving treatment in
8 this Plan, including, without limitation, any additional Claims for interest or penalties, shall be
9 enjoined and discharged by the Plan. Class II(c) is Impaired.

10 In the event the Debtors default on any payment due to the IRS as required under the
11 confirmed Plan, and in the event the Debtors fail to cure said default within 30 days after
12 written notice of the default is mailed to the Debtors and their attorneys, the entire imposed
13 liability together with any unpaid current liabilities, shall become due and payable immediately.
14 The IRS may collect unpaid liabilities that become due as a result of the default through the
15 administrative collection provision or judicial remedies as set forth in the Internal Revenue
16 Code. The IRS shall not be required to seek a modification from the automatic stay to collect
17 any tax liabilities from Property that re-vests with the Debtors.

18 **3.5 Class II – General Unsecured Creditors**

19 Class II consists of (i) all Allowed Unsecured Claims that are not entitled to
20 classification in any other Class of Claims; and (ii) any and all deficiency claims. The Debtors
21 shall pay each Class II Claim its pro-rata share of \$7,225.16 beginning on the Initial Payment
22 Date and every year thereafter for four years in equal annual installments. No interest shall
23 accrue on the Class II Claims. If a Class II Claim is not an Allowed Claim prior to 30 days after
24 the Effective Date, such Claim will be paid on the one-year payment date that falls after it
25 becomes an Allowed Claim. No prepayment penalty shall pertain to this Claim. Class II is
26 Impaired.

27 **ARTICLE 4 - PLAN IMPLEMENTATION**

28 The Debtors will implement the Plan upon entry of the Confirmation Order. Upon the

1 Effective Date, or at such other time as specifically provided for in the Plan, Creditors holding
2 Allowed Claims will receive the treatment provided for in the Plan. Creditors must hold
3 Allowed Claims before they will be entitled to their respective treatment. On the Effective
4 Date, the Debtors will use third-party assets to make the New Value contribution towards
5 implementation of the Plan.

6 The Plan will be funded from the Debtors' post-confirmation income. Unless a party in
7 interest objects to the Debtors' estimate of value of any Asset prior to the Confirmation Date,
8 the value of the Assets set forth in the Plan, as amended, shall be determinative.

9 **ARTICLE 5 - VOTING PROCEDURE**

10 Creditors will vote to accept or reject the Plan. IN GENERAL, THE PLAN CANNOT BE
11 CONFIRMED IF THE PLAN DOES NOT RECEIVE AT LEAST TWO-THIRDS (2/3) IN
12 AMOUNT AND MORE THAN ONE-HALF (1/2) IN NUMBER OF ALLOWED CLAIMS
13 VOTING IN EACH IMPAIRED CLASS. However, if the requisite acceptances are not obtained
14 from one or more Impaired Classes, the Court may nonetheless confirm the Plan pursuant to Code
15 § 1129(b) if one Impaired Class accepts the Plan and the Court finds that the Plan provides, among
16 other things, fair and equitable treatment of the Classes rejecting the Plan and that Creditors receive
17 as much or more under the Plan than they would receive in a Chapter 7 liquidation.

18 **ARTICLE 6 - BINDING EFFECT OF PLAN**

19 The provisions of this Plan shall bind the Debtors and any Person or entity holding a
20 Claim against the Debtors or their Estate, whether asserted or not asserted, whether such Person
21 or entity's Claim arose before or after the respective Petition Date or the Effective Date,
22 whether or not the Claim is Impaired under the Plan, and whether or not such Person or entity
23 has accepted or rejected the Plan.

24 **ARTICLE 7 - EFFECT OF CONFIRMATION**

25 Except as otherwise provided herein, the rights afforded in this Plan shall be in exchange
26 for, and in complete satisfaction and release of, all Claims against the Debtors of any nature
27 whatsoever. All holders of Claims against the Debtors shall be precluded from asserting against the
28 Debtors, the Estate, or the Properties of the Debtors or the Estate any other or further Claim based

1 upon any omission, transaction or other activity of any kind or nature that occurred prior to the
2 Effective Date. This release shall be effective as to each Claim, regardless of whether the Claim is
3 listed on the Debtors' Statements or Schedules filed in this Case, whether a proof of Claim was
4 filed, whether such proof of Claim was withdrawn, whether the Claim is an Allowed Claim, in
5 whole or in part, or whether the holder of the Claim votes to accept or reject this Plan. Upon the
6 Effective Date, all Property of the Estate will vest in the Debtors, who, subject to the obligations set
7 forth in the Plan, may use the Property free of any burdens of the Bankruptcy Code and without
8 need to obtain Court approval of his actions. This release is not a discharge and the Debtors are
9 entitled to a discharge only as permitted by Code § 1141(d)(2) and (5).
10

11 **ARTICLE 8 - MODIFICATION OF PLAN**

12 This Plan may be modified in accordance with the provisions of the Bankruptcy Code
13 and Chapter 11 as follows:

14 **8.1 Pre-Confirmation**

15 In accordance with Code § 1127(a), the Debtors may propose the modification of the
16 Plan in writing at any time before confirmation, provided that the Plan, as thus modified, meets
17 the requirements of Code §§ 1122 and 1123, and the Debtors complies with Code § 1125.

18 **8.2 Post-Confirmation**

19 In accordance with Code § 1127(b), the Plan also may be modified at any time after
20 confirmation and before its substantial consummation, provided that a) the Plan as modified
21 meets the requirements of Code §§ 1122 and 1123, b) the circumstances then existing justify
22 such modification, and c) the Court confirms the Plan as thus modified under Code § 1129.

23 **8.3 Effect of Modification**

24 Every modification of the Plan will supersede the previous version of the Plan as and
25 when each modification is effective. When superseded, the previous version of the Plan will be
26 in the nature of a withdrawn or rejected settlement proposal, and will be null, void, and
27 unusable by the Debtors or any other party for any purposes whatsoever with respect to any of
28 the contents of such version of the Plan.

1 Notwithstanding anything to the contrary contained herein, the Debtors shall not be
2 bound by estoppel, or the principles of *res judicata* or collateral estoppel, with respect to any
3 term or provision contained herein in the event the Plan is not confirmed upon the terms and
4 provisions set forth herein.

5 **ARTICLE 9 - RETENTION OF JURISDICTION**

6 Notwithstanding the confirmation of this Plan, the Bankruptcy Court shall retain
7 jurisdiction for all matters arising out of, or related to, the Case and this Plan, including, but not
8 limited to all of the following matters:

- 9 a) Allowance and payment of any Claims upon any objection thereto (or other
10 appropriate proceedings) by any party in interest entitled to proceed in that
manner;
- 11 b) Determination and adjudication of any issues that arise out of or relate to a sale
12 of any Property;
- 13 c) Determination and adjudication of any disputes that arise regarding the
interpretation of any provisions of this Plan;
- 14 d) Facilitation of the consummation of this Plan by entering, consistent with the
15 provisions of this Plan, any further necessary or appropriate orders regarding this
Plan and any provisions thereof;
- 16 e) Adjudication of any causes of action or other proceedings presently pending or
17 otherwise referenced in the Plan, including but not limited to any action
18 regarding the initiation, prosecution, enforcement, compromise or settlement of
the causes of action in the Estate, and the adjudication of any and all “core
proceedings” under 28 U.S.C. § 157(b) that may be pertinent to the Case;
- 19 f) Enforcement of any provisions of the Plan and any and all documents relating to
20 the Plan;
- 21 g) Determination and adjudication of any issues that relate to the Bankruptcy Case,
22 and any governmental unit’s Claim with respect to any tax, or any fine, interest
or penalty relating to a tax; and
- 23 h) Determination of any dispute that may arise regarding the enforcement of any
settlement or compromise related to the Case.

24 **ARTICLE 10 - RETENTION AND PROSECUTION OF CLAIMS**

25 **10.1 Preservation of Debtors’ Claims, Demands, and Causes of Action**

26 In accordance with Code § 1123(b)(3), all of the Debtors’ claims and causes of action
27 will a) survive the entry of the Confirmation Order and the Effective Date, b) not be discharged
28 by the Plan, and c) become and remain part of the Debtors’ Assets after the Effective Date.

1 **10.2 Procedure for Determination of Claims**

2 **10.2.1 Disputed Claims**

3 Except as to any Claim that has been Allowed prior to the Effective Date, on or
4 before the sixtieth day after the Effective Date, the Debtors or any party in interest may object
5 to the allowance of a Claim or seek estimation thereof. *See* Section 2.3 above. No payments or
6 other distributions will be made to holders of Claims unless and until such Claims are Allowed
7 Claims pursuant to a Final Order. If a Claim is not an Allowed Claim as of the Effective Date
8 or when payment is otherwise due under the Plan, payment of the Allowed Claim will be made
9 when a Claim becomes an Allowed Claim after the Effective Date or as otherwise specifically
10 provided in the Plan.

11 No Claim will be an Allowed Claim until timely filed objections to its allowance are
12 resolved. The Court shall resolve all objections at a separate hearing or hearings. **Any Claims**
13 **not timely filed or Allowed shall be discharged by the Confirmation Order.** Only Allowed
14 Claims and interests will receive distributions from the Estate. The Debtors have the right to
15 object to any Claim where it appears that there is some dispute with regard to the Claim as filed.
16 Unless deemed filed pursuant to Rule 3003(b), the failure to timely file a proof of Claim will
17 result in disallowance of the Claim.

18 **10.2.2 Treatment of Contingent Claims**

19 Until such time as a contingent Claim or a contingent portion of an Allowed
20 Claim becomes fixed or absolute or is disallowed, such Claim will be treated as a Disputed
21 Claim for all purposes related to distributions under the Plan. The holder of a contingent Claim
22 will only be entitled to a distribution under the Plan when and if such contingent Claim becomes
23 an Allowed Claim.

24 **ARTICLE 11 - PROVISIONS GOVERNING DISTRIBUTIONS**

25 **11.1 Distributions by the Debtors**

26 The Debtors will pay all Allowed Claims according to the Plan.

27 **11.2 Date of Distributions**

28 Except as otherwise provided in the Plan, or as may be ordered by the Bankruptcy

1 Court, distributions of cash on account of Allowed Claims as of the Effective Date will be made
2 as of the Effective Date or as otherwise agreed by the respective parties. Authorized
3 distributions to be made in accordance with the Plan will be deemed made as of the Effective
4 Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no
5 later than thirty (30) days after the Effective Date. Distributions on account of Disputed Claims
6 that are Allowed after the Effective Date will be made as provided in the Plan and if not so
7 provided no later than thirty (30) days after entry of a Final Order allowing the Claim.

8 **11.3 Delivery of Distributions**

9 Subject to Rule 9010, distributions and deliveries to each holder of an Allowed Claim
10 will be made at the address of such holder as set forth on the respective proof of Claim as of the
11 Effective Date (or at the last known address of such holder if no proof of Claim is filed or if the
12 Debtors have been notified of a change of address). If any holder's distribution is returned as
13 undeliverable, no further distribution to such holder will be made unless and until the Debtors
14 are notified of such holder's then-current address, at which time all missed distributions will be
15 made to such holder without interest. The Debtors will be under no obligation to attempt to
16 locate the holder of any Allowed Claim or to recognize any purported transfer or encumbrance
17 on the rights of holders of Allowed Claims after the Confirmation Date. Amounts of
18 undeliverable distributions will be retained by the Debtors until such distributions are claimed.
19 Any Claimant that does not receive a distribution due to it being undeliverable must request
20 payment on or before the first anniversary of the initial date of such payment. After such date,
21 all unclaimed Property will be paid *pro rata* to the Class II General Unsecured Creditors.

22 **11.4 Means of Payment**

23 Payments made to holders of Allowed Claims pursuant to this Plan will be in United
24 States dollars by checks drawn on the domestic bank selected by the Debtors.

25 **11.5 De Minimis Cash Distributions**

26 No cash payment of less than ten dollars (\$10.00) will be made to any holder of an
27 Allowed Claim unless a request therefore is made in writing to the Debtors.

28 **11.6 Setoff**

Pursuant to Code § 553 or common law rights of setoff or recoupment, the Debtors will, in the ordinary course of his affairs, set off or assert recoupment against any Allowed Claim, the Claims, rights, and causes of action of any nature that the Debtors may hold against the holder of such Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the Debtors of any such Claims, rights, and causes of action that the Debtors may possess against such holder.

ARTICLE 12 - GENERAL PROVISIONS

12.1 Extension of Dates

If any date set forth in this Plan, including a payment due date, falls on a day that is not a Business Day, then such date will be the next Business Day.

12.2 Notices

Any notice required or permitted to be provided under the Plan will be in writing and served by regular postage prepaid first-class mail, hand-delivery, facsimile, or e-mail.

12.3 Default

If the Debtors are unable to perform in accordance with the Plan, then they will be in default. Any Creditor may seek to enforce the Plan. Before doing so, the Creditor must provide notice to the Debtors specifying the nature of the alleged default and a 30-day period to cure the default. Any notice must be in writing and sent via certified mail to the Debtors at the address on file with the Clerk of this Court and with a copy sent via certified mail to:

Thomas H. Allen, Esq.
Cody D. Vandewerker, Esq.
ALLEN BARNES & JONES, PLC
1850 N. Central, Suite 1150
Phoenix, Arizona 85004

12.4 Closure of the Case

At such time as the Plan has been fully administered (*i.e.*, when the Plan has been substantially consummated), the Debtors will file an application for entry of a Final Decree, upon the entry of which the Case shall be deemed closed.

12.5 Effect of Appeal

In the event of any appeal of the Confirmation Order, and provided that no stay of the

effectiveness of such Confirmation Order has been entered, the implementation and enforcement of the Confirmation Order and the Plan according to their terms shall remain unaffected.

12.6 Exculation and Limitation of Liability

Neither the Debtors, nor any of his respective present or former employees, advisors, attorneys, or agents, will have or incur any liability to any holder of a Claim, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of the Case, efforts to obtain confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, whether now known or hereafter discovered, *except for their gross negligence; willful, wanton, or intentional misconduct; or breaches of their fiduciary duties.*

12.7 General Injunction

Except as otherwise expressly provided in this Plan, the Confirmation Order shall provide, among other things, that all parties in interest who have held, hold, or may hold Claims are permanently enjoined with respect to such Claims, on and after the Effective Date, from: a) commencing or continuing in any manner any action or other proceeding of any kind; b) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order; c) creating, perfecting, or enforcing any encumbrance of any kind; d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due e) conducting any form of discovery; or f) otherwise engaging in harassment. The forgoing injunction applies with regard to acts against the Debtors, their Property, successors in interest, and the property of successors in interest.

12.8 Interest

Unless set forth specifically herein, whenever interest is to be computed under the Plan, interest will be simple interest and not compounded. Unless otherwise specifically provided for in the Plan or the Confirmation Order, post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim will be entitled to interest accruing on or after the Petition

1 Date on any Claim.

2 **12.9 Additional Assurances**

3 The Debtors and any party in interest holding Allowed Claims will execute such other
4 further documents as are necessary to implement any of the provisions of the Plan.

5 **12.10 Confirmation by Non-Acceptance Method**

6 The Debtors hereby request, if necessary, confirmation of the Plan pursuant to Code
7 § 1129(b) with respect to any Impaired Class of Claims that does not vote to accept the Plan.

8 **12.11 Vesting**

9 As of the Effective Date of the Plan, the Debtors shall retain and be vested with all of
10 the Estate's Property. All Property shall be free and clear of all liens, Claims, and interests of
11 Creditors and parties in interest except as specifically provided in this Plan.

12 **12.12 Successors and Assigns**

13 The rights and obligations of any Creditor or other party-in-interest referred to in the
14 Plan will be binding upon, and will inure to the benefit of, the successors, assigns, heirs,
15 devisees, executors, and personal representatives of such Creditor or party in interest.

16 **12.13 Withdrawal of Plan**

17 The Plan may be withdrawn by the Debtors at any time before entry of the Confirmation
18 Order.

19 **12.14 Severability and Reformation**

20 The Debtors intend to comply fully with the Bankruptcy Code and applicable non-
21 bankruptcy law in proposing the Plan. Therefore, if the Court determines that any Plan
22 provision is contrary to the Bankruptcy Code or applicable non-bankruptcy law, that provision
23 will be deemed severed and automatically deleted from the Plan if it cannot be reformed, or the
24 provision or its interpretation will be deemed reformed to ensure compliance; provided,
25 however, that nothing contained in this paragraph will prevent the Debtors from modifying the
26 Plan in accordance with and as set forth in the Plan. Pursuant to any ruling by the Court
27 regarding the subject matter of this paragraph, any such severance or reformation will be stated
28 specifically in the Confirmation Order, which then will control notwithstanding any contrary or

1 inconsistent provisions of the Plan.

2 **12.15 Prohibition Against Prepayment Penalties**

3 If the Debtors so choose, in their sole and absolute discretion, to prepay any obligation
4 on which deferred payments are provided for under the Plan, the Debtors will not be liable or
5 subject to the assessment of any prepayment penalty thereon unless otherwise ordered by the
6 Court.

7 **12.16 Payment of Statutory Fees and Filing of Quarterly Reports**

8 Before the Case is closed, all fees payable pursuant to 28 U.S.C. § 1980, as determined
9 by the Court at or in conjunction with the Confirmation Hearing, will be paid on or before the
10 Effective Date and, thereafter, in accordance with applicable bankruptcy law. The Debtors will
11 file all quarterly reports of disbursements as required by the Bankruptcy Code.

12 **12.17 Governing Law**

13 Except to the extent that the Bankruptcy Code is applicable, the rights and obligations
14 arising under this Plan shall be governed by, construed, and enforced in accordance with, and
15 subject to, the laws of the State of Arizona, excluding any laws that result in the application of
16 the laws of another jurisdiction.

17 **12.18 Special Tax Issues**

18 The issuance, transfer, or exchange of a security as defined under the Bankruptcy Code
19 or applicable law, or the making or delivery of any instrument of transfer under this Plan, shall
20 not be taxed under any state or local law imposing a stamp tax or similar tax as provided in
21 Code § 1146.

22 **12.19 Conflicts Between Plan and Confirmation Order**

23 In the event the terms of this Plan and the Confirmation Order conflict, the terms of the
24 Confirmation Order shall govern.

25 RESPECTFULLY SUBMITTED this 5th day of March, 2019.

26
27 /s/ Phillip J. Hoolehan
Phillip J. Hoolehan

28 ///

1 **APPROVED AS TO FORM AND CONTENT:**

2 **ALLEN BARNES & JONES, PLC**

3
4 By: /s/ THA #11160

Thomas H. Allen

Cody D. Vandewerker

5 1850 N. Central Avenue, Suite 1150

6 Phoenix, Arizona 85004

Attorneys for Debtors